

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      JAN 28, 00  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Ziff-Davis Inc.

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Serial No. 75/178,551

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James E. Rosini of Kenyon & Kenyon  
for Ziff-Davis Inc.

Gary R. Thayer, Trademark Examining Attorney, Law Office  
103 (Michael A. Szoke, Managing Attorney).

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Before Simms, Wendel and Rogers, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Ziff-Davis Publishing Company<sup>1</sup> filed an application to  
register the mark SOFTWARE BUYER for the following  
services:

Promoting the goods and services of others by  
preparing and placing advertisements and product  
information in an electronic publication distributed

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<sup>1</sup> A change of name to Ziff-Davis Inc. was recorded by the Office at Reel 1802, Frame 0719 and the heading of this appeal has been amended to reflect this change. Although applicant states that a further change of name to ZD Inc. has also been recorded, the present Office records do not show this further change.

via a computer information network (Class 35); and

Providing multiple user access to a global computer information network for the transfer and dissemination of a wide range of information and information in the field of computer related products and technology; providing a wide range of information and information in the field of computer related products and technology via computer information networks (Class 42).<sup>2</sup>

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney takes the position that the proposed mark SOFTWARE BUYER would be immediately understood by relevant customers as describing the intended audience for applicant's information and advertisement services in the field of computer related products and technology. This type of customer would be the potential "buyer of software" or "software buyer."<sup>3</sup> He supports his position with dictionary definitions of "software" and "buyer"<sup>4</sup> and excerpts of articles from the Nexis database

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<sup>2</sup> Serial No. 75/178,551, filed October 8, 1996, based on an assertion of a bona fide intention to use the mark in commerce.

<sup>3</sup> While the Examining Attorney further argues that the proposed mark is descriptive of the subject matter of the services, we see no such correlation and thus have given no consideration to this argument.

<sup>4</sup> Although the definitions were not introduced by the Examining Attorney until the filing of his brief, the Board may take

showing use of the phrase "software buyer" as a reference to persons who shop for or purchase computer software.

Applicant argues that its mark SOFTWARE BUYER draws upon the connotation of a "buyer" as a purchasing agent for a retail store and by using this personification and attributing the qualities of such an knowledgeable professional to its services is at most suggestive of the high level of expertise in applicant's services. Applicant contends that the commercial impression being created is that its services are similar to those which one would expect to receive from a professional buyer. Applicant cites cases such as *In re Chesebrough-Ponds's Inc*, 163 USPQ 244 (TTAB 1969), in which the mark MANICURIST was held only suggestive when used for nail polish.

The Board has previously held that a mark is merely descriptive if it describes the type of individuals to whom an appreciable number or all of a party's goods or services are directed. See *In re Camel Manufacturing Company, Inc.*, 222 USPQ 1031 (TTAB 1984) and the cases cited therein.

Here the information which applicant is providing via a computer information network, as identified in its Class 42 services, involves, inter alia, computer-related

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judicial notice of dictionary definitions and thus has considered the same.

products or technology. The advertisements placed, or information proffered, by applicant in an electronic publication distributed via such a network may be presumed to include advertisements and information similar in content, there being no limitations as to subject matter in the identification of services for Class 35. Persons interested in the purchase of computer-related products, of which software constitutes a significant portion, would clearly be a target audience for information of this nature. As demonstrated by the dictionary definitions introduced by the Examining Attorney, the term "buyer" may be used to refer to any purchaser, not just a professional purchasing agent.<sup>5</sup> Thus, there is ample reason to conclude that to the ordinary consumers of on-line services such as applicant's the proposed mark SOFTWARE BUYER would do no more than describe the type of individuals to whom applicant's information services are directed, namely, potential software buyers.

We find applicant's proposed interpretation of its mark as conjuring up the image of a purchasing agent and

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<sup>5</sup> The word "buyer" is defined as  
1. A person who buys; purchaser.  
2. A purchasing agent, as for a department or chain store.  
*Random House Unabridged Dictionary, 2<sup>nd</sup> Ed. (1987).*

the attributes thereof to be highly unlikely on the part of the ordinary consumer. In the previously cited *Camel Manufacturing* case, the Board distinguished between marks which specifically describe a category of purchaser to which the applicant's goods or services are directed and those which are not so limited. The mark involved there, MOUNTAIN CAMPER, was found to simply describe the applicable purchasers for the applicant's camping equipment. By contrast, in the *Chesebrough-Ponds'* case, the mark MANICURIST BY CUTEX, when used for nail polish, was held to be only suggestive of the professional results which would be obtained from the product and not likely to be perceived by consumers as limiting the class of purchasers to professional manicurists.

Although applicant attempts to liken its proposed mark to the latter situation, we do not believe that consumers would interpret SOFTWARE BUYER as other than the name of the individuals to whom the information provided by applicant is directed. Any suggestion that the information provided reflects the level of expertise and knowledge of a professional buyer is at best secondary, and one which we doubt most ordinary consumers would even recognize.

Applicant's further argument that its mark for the provision of information on-line should be treated

similarly to marks which are titles of publications and thus by a somewhat different standard is to no avail. Titles of publications are not treated any differently than marks for other products. The same criteria are applied to determine the descriptiveness of a title of a publication. If the title immediately reveals information with respect to the publication, contents or otherwise, the mark is merely descriptive. See *In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993); *In re The Gracious Lady Service, Inc.*, 175 USPQ 380 (TTAB 1972) and the cases cited therein.

Accordingly, we find SOFTWARE BUYER merely descriptive of the intended audience for applicant's informational and advertisement services.<sup>6</sup>

Decision: The refusal under Section 2(e)(1) is affirmed.

R. L. Simms

H. R. Wendel

G. F. Rogers  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

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<sup>6</sup> We need not consider the alternative refusal raised by the Examining Attorney of the mark being deceptively misdescriptive nor the apparent impropriety of his first raising this argument in the final refusal.

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